

SEP 28 2017

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

UNITED STATES OF AMERICA

Case No. 7:94-cr-40106-19

v.

MEMORANDUM OPINION

TIMOTHY BAKHARI MOTLEY,  
Petitioner.

By: Hon. Jackson L. Kiser  
Senior United States District Judge

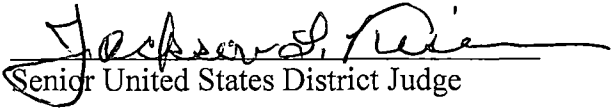
Timothy Bakhari Motley, a federal inmate proceeding pro se, filed a motion to reduce sentence, citing Dean v. United States, 137 S. Ct. 1170 (2017), and 18 U.S.C. § 33582(c)(2). Motley does not identify an applicable sentencing range subsequently lowered by the United States Sentencing Commission, and § 3582(c)(2) is not triggered by Dean. Consequently, I find it more appropriate to treat the motion to reduce sentence invoking Dean as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. See United States v. Winestock, 340 F.3d 200, 203 (4th Cir. 2003) (noting a court may classify a pro se pleading per its contents and regardless of its caption).

Court records indicate that the court already dismissed (ECF No. 1037) a prior § 2255 motion (ECF No. 1035). Thus, this construed § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h). See Whiteside v. United States, 775 F.3d 180, 183-84 (4th Cir. 2014) (en banc) (noting changes in case law do not constitute new facts); cf. United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014) (discussing the relevance of new facts).

I may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not submitted any evidence of having obtained that certification, I dismiss the construed § 2255 motion without prejudice as successive. Based upon my finding that Petitioner has not made the requisite substantial

showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 28<sup>th</sup> day of September, 2017.

  
Senior United States District Judge